

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2015-290-C**

IN RE:	)	
	)	
Petition of the South Carolina Telephone	)	
Coalition for a Determination that	)	
Wireless Carriers are Providing Radio-	)	<b>PETITION FOR REHEARING</b>
Based Local Exchange Services in South	)	
Carolina that Compete with Local	)	
Telecommunications Services Provided	)	
in the State.	)	

CTIA – The Wireless Association<sup>®</sup> (“CTIA”)<sup>1</sup> respectfully moves the Public Service Commission of South Carolina (“Commission”) to rehear or reconsider its January 26, 2016 Order Addressing Wireless-Wireline Competition in the Telecommunications Industry and its Effect on Payment into the Universal Service Fund (“Order”) issued in response to the August 11, 2015 Petition for a Determination that Wireless Carriers are Providing Radio-Based Local Exchange Services in South Carolina that Compete with Local Telecommunications Services Provided in the State (“Petition”) of the South Carolina Telephone Coalition and its individual member companies (“SCTC”).

**I. INTRODUCTION/SUMMARY OF PETITION**

As CTIA argued throughout this proceeding, S.C. Code Ann. § 58-9-280(E)(3) (“Subsection (E)(3)”) and S.C. Code Ann. § 58-9-280(G)(1) (“Subsection (G)(1)”) together

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<sup>1</sup> CTIA appears on behalf of itself and its members Sprint, T-Mobile, TracFone, U.S. Cellular, and Verizon.

provide the *process* the Commission must follow, and the *test for competition* the Commission must use, in order to require wireless carriers to pay into the South Carolina Universal Service Fund (“USF”). Additionally, the plain language of Subsection (E)(3) forecloses the Commission from making the “general wireless industry finding” of competition contained in its Order. Instead of acknowledging the plain language of Subsection (E)(3), the Commission improperly relies on S.C. Code Ann. § 58-9-280(E)(2) (“Subsection (E)(2)”) as a “safety valve.” The Order does not address CTIA’s arguments establishing that Subsection (E)(3) delineates the issues to be decided in this case, and as a result, it incorrectly fails to make the required company-specific findings. The Commission’s reliance on Subsection (E)(2) is unavailing and wholly divorced from the context of S.C. Code Ann. § 58-9-280. Therefore, for the reasons stated herein, the Commission should rehear and/or reconsider the Order and dismiss or deny the Petition.

## **II. ARGUMENT**

### **A. The Order Did not Address CTIA’s Arguments that Subsection (E)(3), and Not Subsection (E)(2), Frames the Issue to be Decided in This Case**

CTIA’s Proposed Order (pp. 7-9) and Post-Hearing Brief (pp. 6-10) make several arguments not mentioned or addressed in the Order: 1) the plain language of S.C. Code Ann. § 58-9-280 demonstrates the Legislature’s intention to make Subsection (E)(3) applicable to wireless carriers, in contrast to Subsection (E)(2) (applicable to “telecommunications companies”); 2) rules of statutory construction require the Commission to apply Subsection (E)(3) (a more specific statutory provision) here, rather than Subsection (E)(2) (a more general provision); 3) the General Assembly’s enactment in 2004<sup>2</sup> of S.C. Code Ann. § 58-9-576(A)(3) expressed its clear intention that Subsection (E)(3) – and not (E)(2) – applies in cases such as this; 4) S.C. Code Ann. § 58-11-110 shows that the Commission lacks jurisdiction to require

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<sup>2</sup> 2005 South Carolina Laws Act 5 (H.B. 3080).

commercial mobile service providers that are not eligible telecommunications carriers or carriers of last resort to contribute to the USF under Subsection (E)(2); 5) the Revised Notice of Filing in this Docket made clear that the Petition sought relief under Subsection (E)(3)<sup>3</sup>; and 6) the Commission has previously recognized that Subsection (E)(3) is the appropriate framework to be followed in determining whether wireless carriers must contribute to the USF.<sup>4</sup>

As set out herein, the Commission's improper use of Subsection (E)(2) results in numerous additional errors of law.

**B. The Order Did Not Address CTIA's Arguments That Subsection (E)(3) Mandates a "Company-By-Company" Determination, and That There is No Statutory Provision, Including Subsection (E)(2), Authorizing the "General Wireless Industry Finding" Made by the Order.**

The Commission is absolutely correct that Subsection (E)(3) "provides a method to require specific carriers to contribute upon a showing as to that particular carrier." Order at p. 10. However, the Order sidesteps the fact that Subsection (E)(3) provides the *only* method to require wireless carriers to contribute to the USF, and incorrectly concludes that "South Carolina statutes do not require a company-by-company determination of whether wireless service is being provided in competition with landline services in the State." Order at p. 9. As argued above, and in CTIA's Proposed Order and Post-Hearing Brief, common rules of statutory construction mandate the "company-by-company determination" spelled out in Subsection (E)(3).

The General Assembly, via Subsection (E)(2), authorized the Commission generally to require all "telecommunications companies" to contribute to the USF, but provided a separate, specific standard, Subsection (E)(3), for wireless carriers. Subsection (E)(3) states that wireless

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<sup>3</sup> See Docket Id 258924, "Revised Notice of Filing and Prefile Testimony Deadlines," in Docket No. 2015-290-C , <https://dms.psc.sc.gov/Attachments/Matter/46ca540d-a40e-448b-ae2a-0edba562a74e>

<sup>4</sup> See, e.g. Proceeding to Establish Guidelines for an Intrastate Universal Service Fund, "Order Issuing Declaratory Ruling," Order No. 2006-335 issued in Docket No. 1997-239-C, July 3, 2006 at Page 3 ("the General Assembly has given the Commission the opportunity pursuant to S.C. Code Ann. § 58-9-280(E)(3) and (9) to include wireless and broadband revenues within the Fund . . .").

carriers must contribute to the USF only if their services compete with a local telecommunications service. It is axiomatic that when one section of a statute addresses an issue in general terms and another section addresses the same issue in specific terms, the more specific section is considered an exception to, or a qualifier of, the section containing the general terms. *See Spectre v. SC DHEC*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010).

The Commission has failed to harmonize Subsections (E)(2), (E)(3) and (G)(1). Rules of statutory construction require that all words of a statute be given effect. *See Ballard v. Ballard*, 314 S.C. 40, 443 S.E.2d 802 (1994). As argued by CTIA, by applying Subsection (E)(2) to an inquiry regarding wireless carriers, the Commission renders all of Subsection (E)(3) superfluous and of no effect, because if Subsection (E)(2) is applicable (and it is not), then the Commission would not need to reference Subsection (E)(3) at all.

The Commission's rationale for its reliance on Subsection (E)(2) is flawed: "[t]he word *'also'* in Subsection (E)(3) is a clear indication that it is *in addition to* the general rule that proceeds it. 'A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . .'" Order at p. 9 – 10. As CTIA has explained in prior filings, Subsection (E)(3) provides a specific set of criteria to be established in order to require wireless carriers to pay into the USF, and these criteria are *in addition to* the language in Subsection (E)(2). CTIA's reading of these statutory provisions does not render the use of the term "also" superfluous, but recognizes, as the Order does not, that Subsection (E)(3) is given effect when wireless carriers are involved, and Subsection (E)(2) is triggered for non-wireless companies. In other words, Subsection (E)(2) applies in one set of circumstances, and the Commission must *also* apply Subsection (E)(3) in a defined, narrow set of circumstances (i.e. when competition from wireless carriers is alleged).

Further, the Order's observation that Subsection (E)(3) may be used in certain contexts (*e.g.* with wireless ETCs or a company with a new business model not contemplated in 1996 when the relevant statutory provisions were enacted) does not support the conclusion that Subsection (E)(2) allows or contemplates a "general wireless industry finding" (Order at p. 10). Instead, this observation demonstrates clearly that Subsection (E)(3) applies specifically to wireless carriers, and Subsection (E)(2) applies to wireline "telecommunications companies". The process through which the Commission has determined that wireless ETCs are required to pay into the USF involves an application of Subsection (E)(3), while the Commission's uniform practice of requiring "telecommunications companies" to contribute is a straightforward application of Subsection (E)(2).

Similarly, the Order's reference to and reliance on other statutory provisions in isolation fails to remove the company-by-company determination of competition required by Subsection (E)(3). The Commission is absolutely correct that "the sections of the statutes should be read together and harmonized." Order at p. 33, ¶ 6. However, in the very next paragraph of the Order the Commission reads Subsection (G)(1) in isolation, and in doing so ignores Subsection (E)(3): "[s]ubsection (G)(1) does not require a company-by company determination of competition. By its express language, Subsection (G)(1) defines what is considered a competitive service." Order at p. 33, ¶ 7. Although that is a true statement, it addresses a completely separate topic than does Subsection (E)(3). Subsection (G)(1) defines the criteria to be used to determine, under Subsection (E)(3), whether a wireless carrier "compete[s] with a local telecommunications service in this State." Subsection (E)(3) and Subsection (G)(1) must be read in tandem, and only by reading the two statutory provisions together do they *both* receive appropriate effect.

Moreover, the Petitioners failed to identify “a local telecommunications service” with which they allege a wireless carrier or carriers are competing. As stated by CTIA’s witness, Mr. Price:

... I am familiar with the standard for determining whether one service competes with another.<sup>5</sup>

**Q. Do the testimonies of the SCTC witnesses identify particular services with which they allege a wireless carrier’s service is competing?**

A. No. None of the SCTC witnesses discusses particular, defined or identifiable services provided by landline companies. Rather, they use a number of terms indiscriminately that refer either to local wireline service or wireline service in general. By my count, their testimonies use twenty-three generic terms for wireline services ...<sup>6</sup>

The Commission must determine, pursuant to Subsection (E)(3), whether a company is providing services “that compete with *a local telecommunications service* provided in this state” (emphasis added) for it to require a company to contribute to the USF. With no evidence on this point presented by the Petitioners, they failed to make the showing required for the relief they requested, and the Commission erred by granting the Petition.

Similarly, Subsection (G)(1) lists among the necessary criteria to determine competition a “particular service” and an “identifiable class or group of customers....” Mr. Price noted that the Petitioners failed to identify a particular service or an identifiable group of customers<sup>7</sup> or any

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<sup>5</sup> Responsive Testimony of Don Price on Behalf of CTIA – The Wireless Association® at 6 (Oct. 13, 2015)(“Price Responsive Testimony”).

<sup>6</sup> *Id.* at 7.

<sup>7</sup> Price Responsive Testimony at 7, 9.

evidence of classes of customers served by their local telecommunications services.<sup>8</sup> The Commission does not address these arguments in the Order, and instead takes a generalized approach to the specific terms being used, which renders the statutory language meaningless. By granting the Petition despite the Petitioner's failure to meet the evidentiary burden defined by Subsections (E)(3) and (G)(1), the Commission has acted in error.

Also, the Commission's conclusions (Order pp. 7 through 10) regarding the notice required in this case are legally incorrect because the Order (and the notice issued by the Commission in this matter) simply did not follow the procedure mandated by Subsection (E)(3). Of note, the Commission departed from its own previous conclusions in this regard. In Commission Order 2008-672 (cited on Page 10 of the Order), the Commission recognized that Subsection (E)(3) "requires notice and hearing" to a *particular* wireless carrier prior to requiring that carrier to pay into the USF. That did not take place in this case.

Throughout the Order, the Commission uses general evidence of wireless competition to support its conclusions. However, as argued by CTIA, Subsection (E)(3) does not call for the "general wireless industry finding" reached by the Commission. As a result, the Commission's findings are inapplicable to the competitive determination required under Subsections (E)(3) and (G)(1).

### **III. CONCLUSION**

The Commission is required to apply statutory provisions as they are written, and it must do so despite any logistical challenges that may exist with respect to the framework required by Subsection (E)(3). By misinterpreting the applicable statutes, the Commission reached inaccurate conclusions and inappropriately granted the Petition. CTIA requests that the

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<sup>8</sup> Surrebuttal Testimony of Don Price, 7, 9. Petitioners also failed to establish a Geographic Area or that wireless service is functionally equivalent of or a substitute service. *See* Price Responsive Testimony at 9 - 10.

Commission rehear and/or reconsider the Order, dismiss or deny the Petition, and grant such other relief as is just and proper.

Respectfully submitted,

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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
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IN RE:

Petition of the South Carolina	)	
Telephone Coalition for a Determination	)	
that Wireless Carriers are Providing	)	
Radio-Based Local Exchange Services	)	<b>CERTIFICATE OF SERVICE</b>
in South Carolina that Compete with	)	
Local Telecommunications Services	)	
Provided in the State	)	

This is to certify that I have caused to be served this day, the Petition for Rehearing, filed by CTIA-The Wireless Association®, as follows:

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February 5, 2016  
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